IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 137 of 1992
and
INCOME TAX REFERNENCE NO 137-A OF 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX
Versus
INTERNATIONAL STEEL CORPN.

Appearance:
1. INCOME TAX REFERENCE No. 137 and 137-A of 1992
MR MANISH R BHATT with Mrs.Mona Bhatt for
Petitioner No. 1
MR JP SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In these references at the instance of the Revenue, the following questions are referred for our opinion, in respect of the assessment years 1985-86 and 1986-87:

"1. Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to treat the ship breaking business as industrial undertaking and accordingly directing to allow deduction under section 80HHA and 80-I?

2. Whether, the Appellate Tribunal is right in law and on facts in deleting the disallowance of unpaid sales tax liability under section 43 B?"

2. We have heard Mrs. Mona Bhatt, learned Standing Counsel for the revenue and Mr. J.P. Shah, learned counsel for the respondent - assessee.

3. As far as the first question is concerned, our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship Breaking Corporation, 2003 (261) ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. Since the provisions of Section 80HH-A are similar, in so far as the controversy involved in the present reference is concerned, we respectfully follow the aforesaid decision and answer the question in the negative, i.e., in favour of the Revenue and against the assessee.

4. Coming to the second question, our attention is drawn to the decision of the Apex Court in Allied Motors (P) Ltd., v. Commissioner of Income-Tax, 224 ITR 677, in which the Apex Court has held that proviso to section 43-B was inserted in the Income-Tax Act, 1961 by Finance Act of 1987 with effect from 1.4.1984 and insertion of Explanation 2 has been done by Finance Act of 1989 with effect from 1.4.1984 and they are both applicable to the entire period from 1.4.1984. Therefore, the assessee who had collected sales tax in the previous accounting year and deposited the same in Treasury within the statutory period in the next accounting year will be entitled to

claim deduction under Section 43-B (a) of the Income Tax Act, 1961. In the facts of the instant case, sales tax was payable by 7.10.1984 and the same was actually paid on 5.10.1984. The assessee, therefore, would be entitled to get deduction.

Accordingly, we answer question No.2 in the affirmative, i.e., in favour of the assessee and against the revenue.

The references accordingly stand disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)